Supreme Court of the United States

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

PETER TOWNSVILLE,
Defendant in Error.

In Error to the Supreme Court of Missouri.

Supplemental Brief of Plaintiff in Error.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

PETER TOURVILLE,
Defendant in Error.

No. 250.

In Error to the Supreme Court of Missouri.

FILED APRIL 4, 1899. (17350.)

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

I.

Since the filing of our original brief in this cause, the 174th volume of the reported decisions of this court has been published, and in it appears the case of Chicago, Rock Island and Pacific Railway Company vs. Sturm, submitted April 5, 1899, and decided May 22, 1899 (174 U. S. 710), which, we respectfully submit, is decisive of the present controversy.

In that case, Sturm sued the railway company in a justice court in Kansas for wages due, and recovered the full amount claimed.

The company appealed to the County District Court.

When the case was called there for trial, the company moved for a continuance on the ground that a creditor of Sturm had sued it in a court in Iowa, of which State the railway company was also a corporation, and had garnisheed the company there for the wages sought to be recovered in this suit, and had recovered a judgment there from which an appeal had been taken which was still pending.

The motion for continuance was denied, the case proceeded to trial, and judgment was rendered for Sturm for the amount sued for, with costs.

A new trial was moved for, on the ground, among others, that the decision was contrary to and in conflict with section 1, article IV., of the Constitution of the United States.

The motion was denied, and the judgment was sustained by the Court of Appeals and by the Supreme Court of the State. The case was then brought to this court.

In reversing the judgment of the Supreme Court of Kansas, and in remanding the cause, Mr. Justice McKenna, speaking for this court, said:

"There are cases for and cases against the proposition that it is the duty of a garnishee to notify the defendant, his creditor, of the pendency of the proceedings, or he will be precluded from claiming the proceedings in defense of an action against himself. We need not comment on the cases or reconcile them, *as such notice*

was given and the defense made. The plaintiff did all it could and submitted only to the demands of the law.

* * * * * * *

"It follows from these views that the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and credit they had there, and were hence entitled to in Kansas."

In the case at bar Tourville sued the railway company in a justice's court in Missouri for wages due, and recovered for the full amount claimed. The company appealed to the Circuit Court.

At the first trial the circuit judge deducted from the wages the amount of a judgment in Illinois against the railway company in a garnishment proceeding there, in which the judgment was in favor of Tourville to the use of one of his Illinois creditors. It was admitted that the company gave to Tourville and his attorney due notice of the Illinois garnishment, prior to judgment, and in ample time to have defended against it, and that no attention was paid to such notice, and no defense ever made in Illinois by either Tourville or his attorney. It was further admitted that the railway company plead the Missouri exemptions of Tourville in the Illinois proceeding, and that such exemptions were not allowed in the Illinois courts.

It was also admitted that prior to the suit for wages in Missouri, by Tourville, that the railway company offered to pay such wages less the amount of the judgment in Illinois, in the garnishment proceeding, which it had been compelled to pay on an execution, and that such offer was refused by both Tourville and his attorney.

Tourville perfected an appeal in the cause to the

St. Louis Court of Appeals. There, on the 26th day of March, 1895, the judgment of the Circuit Court was reversed, on the ground that the service of notice in the Illinois proceeding was not in conformity to the statutes of that State, and the cause remanded with directions to the Circuit Court to enter a judgment for the full amount of the wages sued for.

On the 1st of April, 1895, another garnishment proceeding was commenced in Illinois against Tourville and the railway company to recover the balance of the same debt.

While this second suit in Illinois was still pending the Circuit Court in Missouri, on the 3d day of May, 1895, entered up a judgment against the railway company for the full amount of the wages in dispute, and refused to take cognizance in any form, of the proceedings then pending in Illinois.

The railway company, by various appropriate motions, sought a stay of the proceedings in Missouri until the garnishment case in Illinois could be completed, assigning among other reasons that the judgment of the Circuit Court was in violation of section 1 of article IV. of the Constitution of the United States. During the pendency of the various motions in the Missouri case the Illinois garnishment had progressed until a final judgment had there been rendered against the railway company as garnishee for the full amount of the wages due to Tourville.

Although constantly and promptly advised by the railway company of every step taken in the Illinois proceedings, including the final judgment, the Circuit Court in Missouri refused to recognize them in any form whatever, and, disregarding them *in toto*, rendered

a judgment against the company and in favor of Tourville for the full amount of the wages due, thus leaving the unfortunate stakeholder to pay Tourville's wages and his debts also.

This ruling was affirmed in the Supreme Court of Missouri, and the railway company brought the case here. We are here, therefore, contending for the application of the rule so clearly announced by this court in the Sturm case, *supra*, upon almost precisely the same ultimate facts.

Here, as in the Sturm case, *supra*, the courts of one State have refused, in violation of a plain constitutional provision, to give full faith and credit to the proceedings of a sister State. And here also, if the judgment of the Supreme Court of Missouri is permitted to stand, the unfortunate plaintiff in error will be compelled to pay the wages of Tourville, as well as his debts also, without having the slightest interest in the latter controversy.

For, as before stated, as the court will see upon an examination of the records before it, in the Sturm case *supra*, that Sturm, an employé of the Rock Island Railway Company, sued that company before a justice of the peace in the State of Kansas for the sum of $140.00 wages due.

There was a judgment in the plaintiff's favor before the justice, from which the company appealed to the District Court of Republic County, Kansas. When the case was called for trial in that court the company moved for a continuance on the ground that a garnishment proceeding was then pending against it in Pottawattomie county, Iowa, where it also resided, and could be served with process, to recover a part of the

same wages then due to said Sturm, for which he had sued in Kansas.

The District Court of Kansas overruled the motion, and entered a judgment against the company for the full amount of wages due to Sturm.

Upon appeal the judgment below was affirmed both in the Court of Appeals and in the Supreme Court of Kansas.

The case then came here on a writ of error from the Supreme Court of Kansas. The sole issue raised was the refusal of the courts of Kansas, *nisi prius* and appellate, to give full faith and credit to the proceedings of a sister State, Iowa, as required by the Constitution of the United States.

For this error the judgment of the Supreme Court of Kansas was reversed in this court and the cause remanded, this court holding that "the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and credit they had there, and were hence entitled to in Kansas."

In the case at bar, Tourville, an employé of the Wabash Railroad Company, sued that company before a justice of the peace in Missouri for his wages, amounting to $81.98.

There was a judgment in the plaintiff's favor before the justice in Missouri, from which the company appealed to the Circuit Court of the City of St. Louis, Missouri.

When the case was called for the last trial, in that court, the company by various appropriate and timely motions, in strict conformity to the Missouri code of pleading and practice, prayed for a stay of the proceedings in the Missouri court on the ground that a

garnishment suit was then pending against it in St. Clair county, Illinois, where it also resided, and was incorporated, and could be served with process, to recover precisely the same wages then due to Tourville for which he had sued in Missouri.

The Circuit Court of the City of St. Louis, Missouri, overruled the motion and entered a judgment against the company for the full amount of wages due to Tourville.

Upon appeal, the judgment below was affirmed in the Supreme Court of Missouri.

The case is now here on a writ of error from the Supreme Court of Missouri.

Here, as in the Sturm case *supra*, the sole issue raised is the refusal of the courts of Missouri, *nisi prius* and appellate, to give full faith and credit to the proceedings of a sister State, Illinois, as recognized by the Constitution of the United States.

The facts in the two cases, so far as that issue is concerned, are exactly the same, and upon principle the Sturm case is, of necessity, a controlling authority here. And it should be so, because in that case, as in this one, it was *not* a contest between two attaching creditors in sister States, nor is there any question of priority raised as between two such conflicting claims, nor is there any conflict between two jurisdictions as to which one shall be paramount: but it *is* a question whether a valid proceeding then pending in Illinois, in a case where the courts of that State had ample jurisdiction, can be ignored and disregarded in the courts of Missouri, so as to compel the plaintiff in error here, a mere stakeholder, to pay not only the wages of one of its employés, but his debts also.

This result can be avoided in the case at bar by an application to it of the principle announced by this court in the Sturm case; and that principle, besides being a mandatory part of the organic law of the land, is so just and fair as to commend itself to every fair-minded man.

For the reasons so well stated by this court in the Sturm case we, therefore, ask that the judgment of the Supreme Court of Missouri, in the case at bar, be reversed, with directions to that court to permit the plaintiff in error to introduce proof of the final judgment against it in Illinois, with the further direction to give full faith and credit in the courts of Missouri to the judgment of that sister State.

Respectfully submitted,

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